

AMENDATORY SECTION (Amending WSR 08-11-103, filed 5/20/08, effective 6/20/08)

WAC 208-660-006 Definitions. What definitions are applicable to these rules? Unless the context clearly requires otherwise, the definitions in this section apply throughout these rules.

"Act" means the Mortgage Broker Practices Act, chapter 19.146 RCW.

"Advertising material" means any form of sales or promotional materials used in connection with the mortgage broker business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; or internet pages.

"Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

"Application" means the ~~((same as in Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Sec. 3500 as of the effective date of these rules, which is the))~~ submission~~((, whether written or computer-generated,))~~ of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which shall include the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator. An application may be in writing or electronically submitted, including a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

~~((For a refinance or purchase application that is not a prequalification, the credit report may be enough to constitute an application. The credit report date determines when the mortgage broker, or loan originator on behalf of the mortgage broker, has gathered sufficient information to make a credit decision. This may be a trigger for early disclosures when the property address is known.))~~

"Appraisal" means the act or process of developing an opinion of value, the act pertaining to an appraisal-related function, or any verbal or written opinion of value offered by an appraiser. The opinion of value by the appraiser includes any communication that is offered as a single point, a value range, a possible value

range, exclusion of a value, or a minimum value.

"Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

"Branch office" means a fixed physical location such as an office, separate from the principal place of business of the licensee, where the licensee holds itself out as a mortgage broker.

"Branch office license" means a branch office license issued by the director allowing the licensee to conduct a mortgage broker business at the location indicated on the license.

"Business day" means Monday through Friday excluding federally recognized bank holidays.

"Certificate of passing an approved examination" means a certificate signed by the testing administrator verifying that the individual performed with a satisfactory score or higher.

"Certificate of satisfactory completion of an approved continuing education course" means a certificate signed by the course provider verifying that the individual has attended an approved continuing education course.

"Compensation or gain" means remuneration, benefits, or an increase in something having monetary value, including, but not limited to, moneys, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing moneys that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special or unusual bank or financing terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payments of another person's expenses, or reduction in credit against an existing obligation. "Compensation or gain" is not evaluated solely on a loan by loan basis.

For example, a realtor advertising that buyers using their services will receive free loan origination assistance is doing so in the anticipation of "compensation or gain" through increased real estate business.

"Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

For purposes of this definition, the CLI system includes computer hardware or software, an internet-based system, or any combination of these, which provides information to consumers about residential mortgage interest rates and other loan terms which are available from another person.

"Computer loan information system provider" or "CLI provider" is any person who provides a computer loan information service, either directly, or as an owner-operator of a CLI system, or both.

"Consumer Protection Act" means chapter 19.86 RCW.

"Control" including the terms "controls," "is controlled by," or "is under common control" means the power, directly or indirectly, to direct or cause the direction of the management or policies of a person, whether through ownership of the business, by contract, or otherwise. A person is presumed to control another person if such person is:

- A general partner, officer, director, or employer of another person;

- Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests of another person; or

- Has similar status or function in the business as a person in this definition.

"Convicted of a crime," irrespective of the pronouncement or suspension of sentence, means a person:

- Has been convicted of the crime in any jurisdiction;
- Has been convicted of a crime which, if committed within this state would constitute a crime under the laws of this state;
- Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or
- Has been found guilty of a crime by the decision or judgment of a state or federal judge or magistrate, or by the verdict of a jury.

"Department" means the department of financial institutions.

"Designated broker" means a natural person designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210 (1) (e).

"Director" means the director of financial institutions.

"Discount points" or "points" mean a fee paid by a borrower to a lender to reduce the interest rate of a residential mortgage loan. Pursuant to Regulation X, discount points are to be reflected on line 802 of the good faith estimate and settlement statement as a percentage of the loan amount.

"Division of consumer services" means the division of consumer services within the department of financial institutions, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

"Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

"Examination" or "compliance examination" means the examination performed by the division of consumer services, or such other division within the department delegated by the director to

oversee implementation of the act and these rules to determine whether the licensee is in compliance with applicable laws and regulations.

Federal statutes and regulations used in these rules are:

- "Alternative Mortgage Transaction Parity Act" means the Alternative Mortgage Transaction Parity Act (AMTPA), 12 U.S.C. Sec. 3801 et seq.

- "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 ((~~C.F.R.~~)) CFR Part 202.

- "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

- "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a).

- "Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 ((~~C.F.R.~~)) CFR Parts 313-314.

- "Home Equity Loan Consumer Protection Act" means the Home Equity Loan Consumer Protection Act, 15 U.S.C. Sec. 1637 and 1647.

- "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Sec. 2801-2810, Regulation C, 12 ((~~C.F.R.~~)) CFR Part 203.

- "Home Ownership and Equity Protection Act" means the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. Sec. 1639.

- "Homeowners Protection Act" means the Homeowners Protection Act of 1998 (HPA), 12 U.S.C. Sec. 4901 et seq.

- "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sec. 2601 et seq., Regulation X, 24 ((~~C.F.R.~~)) CFR Part 3500 et seq.

"SAFE" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 ("HERA"), Public Law No. 110-289, effective July 30, 2008.

- "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telephone Sales Rule, 16 ((~~C.F.R.~~)) CFR Part 310.

- "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 ((~~C.F.R.~~)) CFR Part 226 et seq.

"Federally insured financial institution" means a savings bank, savings and loan association, or credit union, whether state or federally chartered, or a federally insured bank, authorized to conduct business in this state.

"Financial misconduct," for the purposes of the act, means a criminal conviction for any of the following:

- Any conduct prohibited by the act;
- Any conduct prohibited by statutes governing mortgage brokers in other states, or the United States, if such conduct would constitute a violation of the act;
- Any conduct prohibited by statutes governing other segments

of the financial services industry, including but not limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow officers, title insurance companies, limited practice officers, trust companies, and other licensed or chartered financial service providers; or

- Any conduct commonly known as white collar crime, including, but not limited to, embezzlement, identity theft, mail or wire fraud, insider trading, money laundering, check fraud, or similar crimes.

"Independent contractor" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

The following factors may be considered to determine if a person is an independent contractor:

- Is the person instructed about when, where and how to work?

- Is the person guaranteed a regular wage?

- Is the person reimbursed for business expenses?

- Does the person maintain a separate business?

- Is the person exposed to potential profits and losses?

- Is the person provided employee benefits such as insurance, a pension plan, or vacation or sick pay?

"Licensee" means:

- A mortgage broker licensed by the director; or

- The principal(s) or designated broker of a mortgage broker;

or

- A loan originator licensed by the director; or

- Any person subject to licensing under RCW 19.146.200; or

- Any person acting as a mortgage broker or loan originator subject to any provisions of the act.

"License application fee" means immediately available funds paid to the department for each mortgage broker, loan originator, or mortgage broker branch office license application.

"Loan application" means the same as "application," in this section.

"Loan originator" means a natural person who:

- Takes a residential mortgage loan application for a mortgage broker; or

- Offers or negotiates terms of a mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain. "Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. A person who holds himself

or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

For purposes of further defining "loan originator," "taking a residential mortgage loan application" includes soliciting, accepting, or offering to accept an application for a residential mortgage loan or assisting a borrower or offering to assist a borrower in the preparation of a residential mortgage loan application.

For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

"Loan originator licensee" means a natural person who is licensed as a loan originator or is subject to licensing under RCW 19.146.200 or who is acting as a loan originator subject to any provisions of the act.

"Loan processor" means a natural person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensed or exempt mortgage broker. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan, provided that such communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms.

"Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

"Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan.

For purposes of this definition, a person "assists a person in obtaining or applying to obtain a residential mortgage loan" by, among other things, counseling on loan terms (rates, fees, other costs), preparing loan packages, or collecting enough information on behalf of the consumer to anticipate a credit decision under Regulation X, 24 CFR Part 3500, Section 3500(2)(b).

For purposes of this definition, a person "holds himself or herself out" by advertising or otherwise informing the public that they engage in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate sheets, or other promotional items.

"Mortgage broker licensee" means a person that is licensed as a mortgage broker or is subject to licensing under RCW 19.146.200 or is acting as a mortgage broker subject to any provisions of the

act.

"Mortgage Broker Practices Act" means chapter 19.146 RCW.

"Nationwide Mortgage Licensing System and Registry (NMLSR)" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

"Out-of-state applicant or licensee" means a person subject to licensing that maintains an office outside of this state.

"Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

"Prepaid escrowed costs of ownership," as used in RCW 19.146.030(4), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan.

"Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

"Registered agent" means a person located in Washington appointed to accept service of process for a licensee.

"Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

For purposes of this definition, a loan "primarily for personal, family, or household use" includes loan applications for a finance or refinance of a primary residence for any purpose, loan applications on second homes, and loan applications on nonowner occupied residential real estate provided the licensee has knowledge that proceeds of the loan are intended to be used primarily for personal, family or household use.

"Residential real estate" is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units.

- Residential real estate includes, but is not limited to:
 - A single family home;
 - A duplex;
 - A triplex;
 - A fourplex;
 - A single condominium in a condominium complex;
 - A single unit within a cooperative;
 - A manufactured home when the home and real property together will secure the residential mortgage loan; or
 - A fractile, fee simple interest in any of the above.
- Residential real estate does not include:
 - An apartment building or dwelling of five or more units;
 - A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings; or

- Any dwelling on leased or rented land or space, such as dwellings in a manufactured home park unless the mortgage broker treats such property as residential real estate.

"Table-funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. The mortgage broker originates the loan and closes the loan in its own name with funds provided contemporaneously by a lender to whom the closed loan is assigned.

"Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

"Underwriting" means a lender's detailed credit analysis preceding the offering or making of a loan. The analysis may be based on information furnished by the borrower (employment history, salary, financial statements), the borrower's credit history from a credit report, the lender's evaluation of the borrower's credit needs and ability to pay, and an assessment of the collateral for the loan. While mortgage brokers may have access to various automated underwriting systems to facilitate an evaluation of the borrower's qualifications, the mortgage broker who qualifies or approves a borrower in this manner is not the underwriter of the loan and cannot charge a fee for underwriting the loan. Third-party charges the mortgage broker incurs in using or accessing an automated system to qualify or approve a borrower may, like other third-party expenses, be passed on to the borrower.

AMENDATORY SECTION (Amending WSR 08-11-103, filed 5/20/08, effective 6/20/08)

WAC 208-660-008 Exemption from licensing. (1) **If I am licensed as an insurance agent under RCW 48.17.060, must I have a separate license to act as a loan originator or mortgage broker?** Yes. You will need a separate license as a loan originator or mortgage broker if you are a licensed insurance agent and you do any of the following:

(a) Take a residential mortgage loan application for a mortgage broker;

(b) Offer or negotiate terms of a mortgage loan for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;

(c) ~~((Make a residential mortgage loan, or))~~ Assist a person

in obtaining or applying to obtain a residential mortgage loan, for compensation or gain; or

(d) Hold yourself out as being able to perform any of the above services.

(2) **Are insurance companies exempt from the Mortgage Broker Practices Act?** Yes. Insurance companies authorized to transact the business of insurance in this state by the Washington state office of the insurance commissioner are exempt from the Mortgage Broker Practices Act.

(3) **If I make residential mortgage loans under the Consumer Loan Act, chapter 31.04 RCW, am I exempt from the Mortgage Broker Practices Act?** If you are licensed under the Consumer Loan Act, only residential mortgage loans are exempt from the Mortgage Broker Practices Act. Complying with the Consumer Loan Act includes abiding by the requirements and restrictions of that act and counting all loans originated and made under that act for purposes of your annual assessment.

(4) **If I make residential mortgage loans under the Consumer Loan Act, chapter 31.04 RCW, are my loan originators exempt from the Mortgage Broker Practices Act?** Your loan originator employees are also exempt from the Mortgage Broker Practices Act for their loan originator activities on residential mortgage loans.

Your independent contractor loan originators are not exempt from the Mortgage Broker Practices Act for their residential mortgage loan originator activities.

(5) **As an attorney, must I have a mortgage broker or loan originator license to assist a person in obtaining or applying to obtain a residential mortgage loan in the course of my practice?**

(a) If you are an attorney licensed in Washington and if the mortgage broker activities are incidental to your professional duties as an attorney, you are exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (1)(c).

(b) Whether an exemption is available to you depends on the facts and circumstances of your particular situation. For example, if you hold yourself out publicly as being able to perform the services of a mortgage broker or loan originator, or if your fee structure for those services is different from the customary fee structure for your professional legal services, the department will consider you to be principally engaged in the mortgage broker business and you will need a mortgage broker or loan originator license before performing those services. A "customary" fee structure for the professional legal service does not include the receipt of compensation or gain associated with assisting a borrower in obtaining a residential mortgage loan on the property.

(6) **As a licensed real estate broker or salesperson, must I have a mortgage broker or loan originator license when I assist the purchaser in obtaining financing for a residential mortgage loan involving a bona fide sale of real estate?** You are exempt from the act under RCW 19.146.020 (1)(~~(g)~~) (f) if you only receive the customary real estate commission in connection with the transaction. A "customary" real estate commission does not include receipt of compensation or gain associated with the financing of

the property. A "customary" real estate commission only includes the agreed upon commission designated in the listing or purchase and sale agreement for the bona fide sale of the subject property.

(7) Under what circumstances will the director approve an exemption under RCW 19.146.020(4) for the exclusive agents working as loan originators of an affiliate of a bank that is wholly owned by the bank holding company that owns that bank?

(a) The director will provide a written exemption from loan originator licensing for the exclusive agents of an affiliate of a bank that is wholly owned by the bank holding company that owns the bank if the director finds that the affiliate is licensed and is in "good standing" with the department and the affiliate has procedures in place, as evidenced by a written "plan of business," to reasonably assure the department that:

(i) The exclusive agents of the affiliate of a bank operate exclusively as loan originators for the affiliate and not for other mortgage brokers;

(ii) The affiliate of the bank requires continuing education for the exclusive agents that meets the same or similar requirements approved by the director for licensed loan originators;

(iii) The affiliate of the bank will notify the department if the affiliate terminates an exclusive agent because the exclusive agent:

(A) Has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years; or

(B) Has been convicted of a felony, or a gross misdemeanor involving dishonesty or financial misconduct, within the prior seven years; or

(C) Has been subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(b) To qualify for this exemption, the affiliate must make a written request to the department and submit a "plan of business" with the request. After receipt of this request, the department will notify the affiliate in writing within ten business days whether the affiliate's exclusive agents qualify for the exemption, or if the department will conduct additional review of the affiliate and the "plan of business." The affiliates must receive the department's notice of qualification for exemption before the affiliate's exclusive agents take any action that would subject them to licensing under the act.

(c) The exemption granted by the director remains valid as long as the affiliate complies in all material respects with its "plan of business" and the affiliate remains in good standing with the department.

(8) What are the responsibilities of a mortgage broker that is exempt from the licensing provisions of the act? The owners of companies exempt from licensing under RCW 19.146.020 (1)(e), (g),

or (4), are responsible for:

(a) Complying with RCW 19.146.0201 through 19.146.080, and 19.146.235;

(b) Ensuring compliance with the act by all persons representing the exempt mortgage broker; and

(c) Notifying the director of any change affecting the mortgage broker's exempt status under the act.

(9) **Are the independent contractor(s) loan originators of a mortgage broker exempt from licensing under RCW 19.146.020 (1) (b), (c), (e), and (g) themselves exempt?** No. After January 1, 2007, an independent contractor working as a loan originator for a mortgage broker exempt under RCW 19.146.020 (1) (b), (c), (e), and (g) must hold a loan originator license.

(10) **What other persons or entities are exempt from the Mortgage Broker Practices Act?**

(a) Any person doing any act under order of any court except for a person subject to an injunction to comply with any provision of the act or any order of the director issued under the act.

(b) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection (b).

(11) **When is a CLI provider exempt from the licensing requirements of the act?** A CLI provider is exempt from the licensing requirements of the act:

(a) When the CLI provider meets the general statutory requirements under RCW 19.146.020 (1) (a), (c), (d), (e), (g), or (h); or

(b) When a real estate broker or salesperson licensed in Washington, acting as a CLI provider and a real estate agent, obtains financing for a real estate transaction involving a bona fide sale of real estate and does not receive either:

(i) A separate fee for the CLI service; or

(ii) A sales commission greater than that which would be otherwise customary in connection with the sales transaction; or

(c) When a person, acting as a CLI provider:

(i) Provides only information regarding rates, terms, and lenders;

(ii) Complies with all requirements of subsection (12) of this section;

(iii) Does not represent or imply to a borrower that they are able to obtain a residential mortgage loan from a mortgage broker or lender;

(iv) Does not accept a loan application, assist in the completion of a loan application, or submit a loan application to a mortgage broker or lender on behalf of a borrower;

(v) Does not accept any deposit for third-party provider services or any loan fees from a borrower in connection with a loan, regardless of when the fees are paid;

(vi) Does not negotiate interest rates or terms of a loan with a mortgage broker or lender on behalf of a borrower; and

(vii) Does not provide to the borrower a good faith estimate

or other disclosure(s) required of mortgage brokers or lender(s) by state or federal law.

(d) If the CLI provider is not exempt under (a), (b), or (c) of this subsection, the CLI provider is not required to have a mortgage broker license if the CLI provider does not receive any fee or other compensation or gain, directly or indirectly, for performing or facilitating the CLI service.

(12) When is a CLI provider required to have a mortgage broker license?

(a) If a CLI provider, who is not otherwise exempt from the licensing requirements of the act, performs any act that would otherwise require that they be licensed, including accepting a loan application, or submitting a loan application to a mortgage broker or lender, the CLI provider must obtain a mortgage broker or a loan originator license.

(b) Example - License required: A CLI provider uses an internet-based CLI system in which an abbreviated application is available for online completion by borrower. Once the borrower presses "submit," the information collected in the abbreviated application is forwarded to lender. The information contains the borrower's name, Social Security number, contact information, purpose of the loan sought (e.g., purchase, refinance, home equity, second mortgage), size of loan requested, annual salary, and a self-declaration of total unsecured debt. The electronic entries made by the borrower are then used by lender to electronically populate "form fields" and to initiate lender's loan application. A loan originator for the lender then follows up with borrower to complete the loan application. On or after closing, CLI provider receives a CLI service fee.

(c) Example - License not required: A CLI provider uses an internet-based CLI system in which various interactive informational tools are present, including an online "prequalification" tool. Based upon borrower's self-declared data input, borrower receives an indication of borrower's "maximum affordable loan amount," based upon standard norms of debt-to-income ratio and loan-to-value ratio, and also subject to verification of information, availability and suitability of loan products, and independent underwriting by any lender. The borrower indicates a desire for follow-up from one or more lenders by inputting personal contact information and pressing "submit." A number of lenders receive only the personal identity information of borrower and not any financial information. However, the CLI system has been programmed (and may be continuously reprogrammed) to route personal contact information to certain lenders based upon borrower's "prequalification" data input and the lending criteria of each of the lenders for whom CLI provider has a relationship. None of borrower's self-declared financial information is actually submitted to any of the lenders whose criteria match borrower's profile. Loan originators from lender A and lender B initiate contact with borrower based solely on borrower's contact information. Lender A and lender B, through their assigned loan originators, contact borrower with the object of beginning and

hopefully completing a loan application. In this example, CLI provider has not taken a loan application.

(13) Must the CLI provider provide any disclosures?

(a) Yes. If a borrower using or accessing the CLI services pays for the CLI service, either directly or indirectly, the CLI provider must give the following disclosure:

(i) The amount of the fee the CLI provider charges the borrower for the service;

(ii) That the use of the CLI system is not required to obtain a residential mortgage loan; and

(iii) That the full range of loans available may not be listed on the CLI system, and different terms and conditions, including lower rates, may be available from others not listed on the system.

(b) Each CLI provider must give the borrower a copy of the disclosure form when the first CLI service is provided to the borrower. The form must be signed and dated by the borrower and a copy maintained as part of the CLI provider's books and records for at least two years.

(14) Are CLI system providers subject to enforcement under the act? Yes. CLI system providers are responsible for any violations of the act and will be subject to any applicable fines or penalties.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-155 Mortgage brokers--General. (1) **May I originate residential mortgage loans in Washington without a license?** No. Mortgage brokers and loan originators must have a valid Washington license, or be exempt from licensing pursuant to RCW 19.146.020, in order to originate residential mortgage loans. There is no "one-time one loan" exception.

(2) **May I originate a Washington residential mortgage loan using the license of an already licensed or exempt Washington mortgage broker and then split the proceeds with that mortgage broker?** No. Mortgage broker licenses may only be used by the person named on the license. Mortgage broker licenses may not be transferred, sold, traded, assigned, loaned, shared, or given to any other person.

(3) **As a licensed mortgage broker, am I responsible for the actions of my employees and independent contractors?** Yes. You are responsible for any conduct violating the act or these rules by any person you employ, or engage as an independent contractor, to work in the business covered by your license.

(4) **Who at the licensed mortgage broker company is responsible for the licensee's compliance with the act and these rules?** The designated broker, principals, and owners with supervisory authority are responsible for the licensee's compliance with the

act and these rules.

(5) **What is the nature of my relationship with the borrower?** You have a fiduciary relationship with the borrower. See RCW 19.146.095.

(6) **Under what circumstances may a mortgage broker charge the borrower a fee, commission, or other compensation for services rendered by the mortgage broker in obtaining a loan for the borrower?** The mortgage broker may charge the borrower a fee, commission, or other compensation for the preparation, negotiation, and brokering of a residential mortgage loan when the loan is closed on the terms and conditions agreed upon by the borrower and the mortgage broker.

((+6+)) (7) **Under what circumstances may a mortgage broker charge the borrower a fee, commission, or other type of compensation for services rendered when the loan does not close at all, or does not close on the terms and conditions agreed upon by the borrower and the mortgage broker?** A mortgage broker may charge a fee, and may bring a suit for collection of the fee, not to exceed three hundred dollars, for services rendered, for the preparation of documents, or for the transfer of documents in the borrower's file which were prepared for, or paid for by, the borrower if:

(a) The mortgage broker has obtained a written commitment from a lender on the same terms and conditions agreed upon by the borrower and the mortgage broker; and

(b) The borrower fails to close on a loan through no fault of the mortgage broker; and

(c) The fee is not otherwise prohibited by the Truth in Lending Act.

((+7+)) (8) **As a mortgage broker, may I solicit or accept fees from a borrower in advance to pay third-party providers?** Yes. However, prior to accepting the funds, you must provide the borrower in writing a notice identifying the specific third-party provider goods and services the funds are to be used for. Additionally, you must not charge the borrower more for the third-party provider goods and services than the actual costs of the goods and services charged by the provider. Once you have the funds you must then:

(a) Deposit the funds in a trust account pursuant to the act and these rules (see WAC 208-660-410 on Trust accounting);

(b) Refund any fees collected for goods or services not provided.

((+8+)) (9) **What is a "written commitment from a lender on the same terms and conditions agreed upon by the borrower and mortgage broker"?** The written commitment is a written agreement or contract between the mortgage broker and lender containing mutually acceptable loan provisions and terms. The lender must be one with whom the mortgage broker maintains a written correspondent or loan brokerage agreement as required by RCW 19.146.040(3). The mutually acceptable loan provisions and terms must be the same terms and conditions set forth in the most recent good faith estimate signed by both the borrower and the mortgage broker.

~~((+9+))~~ (10) **What action must a mortgage broker take to activate a loan originator license?** To activate a loan originator license, the licensed mortgage broker must ~~((confirm with the department that the loan originator will be working for the licensed mortgage broker))~~ file a sponsorship request through the NMLSR.

~~((+10+))~~ (11) **What action must a mortgage broker take to terminate a working relationship with a loan originator?** The licensed mortgage broker must ~~((notify the department it is terminating the working relationship with the loan originator))~~ process the termination through the NMLSR.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-163 Mortgage brokers--Licensing. (1) **How do I apply for a mortgage broker license?** Your application consists of an on-line filing through the NMLSR and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR system.

(a) **Appoint a designated broker.** You must appoint a designated broker who meets the requirements of WAC 208-660-250.

(b) **Submit an application.** You must ~~((fill out))~~ complete an application in a form prescribed by the director. ~~((Submit the application with the appropriate attachments to the department for review.))~~

(c) **Pay the application and license fees.** You will have to pay ~~((an))~~ application fees to cover the ~~((department's))~~ costs of processing ~~((and reviewing))~~ the application. You must also pay a separate annual license fee. See WAC 208-660-550, Department fees and costs.

(d) **Prove your identity.** You must provide information about the identity of owners, principals, officers, and the designated broker, including fingerprints.

(e) **Provide a surety bond.** Mortgage brokers must have a surety bond of twenty to sixty thousand dollars depending on the average number of loan originators representing the mortgage broker. See WAC 208-660-175 (1)(e).

(2) **What information will the department consider when deciding whether to approve a mortgage broker license application?** The department considers the financial responsibility, character, and general fitness of the applicant, principals, and the designated broker.

(3) **Why does the department consider financial responsibility, character, and general fitness before issuing a mortgage broker license?** One of the purposes of the act is to ensure that mortgage brokers and loan originators deal honestly and fairly with the

public. Applicants, principals, and designated brokers who have demonstrated their financial responsibility, character, and general fitness to operate their businesses honestly, fairly, and efficiently are more likely to deal honestly and fairly with the public.

(4) What specific information will the department consider to determine if the mortgage broker business will be operated honestly, fairly, and in compliance with applicable law?

(a) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years.

(b) Whether the applicant, licensee or other person subject to the act has been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony, within the prior seven years.

(c) Whether the licensee or other person subject to the act is, or has been, subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(d) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

(e) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject to the act has been notified of the complaints and been given the opportunity to respond.

(f) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

(g) Whether the licensee or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee, or with an assurance of discontinuance entered into with the director or director's designee.

(h) Whether the licensee or other person subject to the act has interfered with an investigation, or disciplinary proceeding by willful misrepresentation of facts before the director or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

(5) What will happen if my mortgage broker license application is incomplete? The department will reject and return the entire application package to you with a notice identifying the incomplete, missing, or inaccurate information. You must follow the department's directions to correct the problems. You can then resubmit the application package.

(6) **How do I withdraw my application for a mortgage broker license?** Send the department a written request, in a form prescribed by the department, to withdraw your mortgage broker license application.

(7) **When will the department consider my mortgage broker license application package abandoned?** If you do not respond to the department within ten business days from the date of the department's second request for information, your application is considered abandoned. You may reapply by submitting a new application per subsection (1) of this section.

(8) **What are my rights if the director denies my application for a mortgage broker license?** You have the right to request an administrative hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW. To request a hearing, you must notify the department within twenty days from the date of the director's notice to you that your license application has been denied, that you wish to have a hearing.

Upon denial of your mortgage broker license application, and provided the department finds no unlicensed activity, the department will return your surety bond, and refund the license fee and any unused portion of the application fee.

(9) **What Washington law protects my rights when my application for a mortgage broker license is denied, or my mortgage broker license is suspended or revoked?** The Administrative Procedure Act, chapter 34.05 RCW, governs the proceedings for license application denials, cease and desist orders, license suspension or revocation, the imposition of civil penalties or other remedies ordered by the department, and any appeals or reviews of those actions.

(10) **May I advertise my business while I am waiting for my mortgage broker license application to be processed?** No. It is a violation of the act for nonlicensed, nonexempt mortgage brokers or loan originators to hold themselves out as mortgage brokers or loan originators in Washington.

(11) **May I originate Washington residential mortgage loans while waiting for my mortgage broker license application to be processed?** No. You may not originate loans prior to receiving your mortgage broker license.

(12) **How do I change information on my mortgage broker license?** You must file a license amendment application (~~((with the department, in a form prescribed by the department))~~) through the NMLSR. You must file the amendment application within thirty days of the change occurring.

(13) **When does a mortgage broker license expire?** The mortgage broker license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

(14) **When may the department issue interim mortgage broker licenses?** To prevent an undue delay, the director may issue interim mortgage broker licenses, including branch office licenses, with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined

by the director, to receive an interim license.

For purposes of this section, undue delay includes the adjustment of license expiration or renewal dates to coincide with the implementation of systems designed to assist in licensing uniformity and provide data repositories of licensing information.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the result of the applicant's background check.

(15) May the department issue replacement licenses with an expiration date? Yes. In order to create and maintain a licensing system with expiration or renewal dates that are uniform, the department may issue new licenses with expiration dates to existing license holders. The new licenses will expire annually.

(16) How do I renew my mortgage broker license?

(a) Before the license expiration date you must:

(i) File the mortgage broker annual report, and any other required notices, with the director. See WAC 208-660-400, Reporting requirements.

(ii) Show evidence that your designated broker completed the required annual continuing education.

(iii) Verify the surety bond is adequate for the average number of loan originators, including all locations.

(iv) Pay the annual license assessment fee.

(b) The renewed license is valid for the term listed on the license or until surrendered, suspended, or revoked.

(17) If I let my mortgage broker license expire must I apply to get a new license? If you complete all the requirements for renewal within forty-five days of the expiration date, you may renew an expired license. However, if you renew your license during this forty-five day period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (16) of this section for the license renewal requirements.

During this forty-five day period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or a department "date received" stamp within the forty-five days. If you fail to comply with the renewal request requirements within forty-five days, you must apply for a new license.

(18) May I still conduct my mortgage broker business if my mortgage broker license has expired? No. If your mortgage broker license expires, you must not conduct any business under the act that requires a license until you renew your license.

(19) What should I do if I wish to close my mortgage broker business? You may surrender the mortgage broker license by notifying the department, in a form prescribed by the department, of your intention to stop doing mortgage loan business in Washington. Surrendering your license does not change your civil or criminal liability, or your liability for any administrative

actions arising from any acts or omissions occurring before you surrender your license. Contact the Washington department of revenue to find out how to handle any unclaimed funds in your trust account.

(20) **May I transfer, sell, trade, assign, loan, share, or give my mortgage broker license to another person or company?** No. A mortgage broker license authorizes only the person named on the license to conduct the business at the location listed on the license. See also WAC 208-660-155(2).

(21) **Must I display my mortgage broker license?** Yes. Your mortgage broker license must be prominently displayed at the licensed location.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-195 Mortgage brokers--Branch offices. (1) **May I open branch offices under my mortgage broker license?** Yes. A licensed mortgage broker may submit license application(s) to the department to establish branch office(s) under the existing mortgage broker license. Each branch office must be licensed and must pay an annual license fee. See WAC 208-660-550, Department fees and costs.

(2) **If my branch offices are under separate ownership, does that limit my liability for their activities?** No. Licensed mortgage brokers are responsible for the activity and violations at their branch offices regardless of the structure or label given the branch offices. Licensure of a branch office creates a direct line of responsibility from the main office to the branch.

(3) **If my branch offices are under separate ownership, what level of supervision must I maintain?** Because branch offices, regardless of their business structure, are not independent from your license and surety bond, you are responsible for the conduct of anyone conducting business under your license. You must have a written supervisory plan. The details of the plan, and how you implement the plan for your branch offices, must take into account the number of branch offices, their location, and the number of individuals working at the branch offices. You must maintain your written supervisory plan as part of your business books and records.

(4) **How do I apply for a mortgage broker branch office license?** As the licensed mortgage broker, you must apply ((to the department)) for a branch office license through the NMLSR and receive a branch office license from the department before operating from any location other than your licensed location. ((The application for a mortgage broker branch office license must be in a form prescribed by the director. The licensed mortgage broker)) You must be in good standing, and may need to increase the

amount of the surety bond. You will have to pay application and annual assessment fees for the branch office(s). See WAC 208-660-550, Department fees and costs.

(5) **What does the department consider when reviewing an application for a branch office license?** The department considers:

(a) Whether the mortgage broker is in good standing. See WAC 208-660-007.

(b) Whether the amount of the mortgage broker's surety bond is sufficient to cover the loan originators that will be working from the branch office.

(c) Whether the physical address listed in the application can be verified as a branch office location.

(6) **Must I display my branch office license?** Yes. Your mortgage broker branch office license must be prominently displayed in the branch office.

(7) **If I am an internet company, how do I display my license?** You must display your license information, as it appears on your license, including any or all business names, and the license number, on your web site. The information must also include a list of the states in which you are licensed.

(8) **How do I change information on my mortgage broker branch office license?** You must file a license amendment (~~(application with the department, in a form prescribed by the department. You must file the application)~~) through the NMLSR within thirty days of the change occurring.

(9) **Does my branch office license expire?** The license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

(10) **How do I renew my mortgage broker branch office license?**

(a) Before the expiration date, the licensed mortgage broker must:

(i) Verify the surety bond is adequate for the licensee's average number of loan originators.

(ii) Submit a renewal and pay the branch office annual assessment fee through the NMLSR.

(b) The renewed mortgage broker branch office license is valid for the term listed on the license or until surrendered, suspended, or revoked.

(11) **If my mortgage broker branch office license expires, must I apply for a new license?** If you complete all the requirements for renewal within forty-five days of the expiration date you may renew an existing license. However, if you renew your license during this forty-five day period, in addition to paying the annual assessment on your branch office license, you must pay an additional fifty percent of your annual assessment for that branch. See subsection (10) of this section for the license renewal requirements.

During this forty-five day period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

Any renewal requirements received by the department must be evidenced by either a postmark or "date received" stamp within the

forty-five days. If you fail to comply with the renewal request requirements within forty-five days, you must apply for a new license.

(12) If my mortgage broker branch office license has expired, may I still conduct my mortgage broker business from that location? No. Once the mortgage broker branch office license has expired, you must not conduct any business under the act that requires a license until you renew your license.

(13) If my mortgage broker main office license expires, may I still conduct my mortgage broker business from a branch office? No. Once the mortgage broker main office license expires, you must not conduct any business under the act that requires a license from any location until you renew the main office license.

(14) May I add a trade name (or "DBA") to my mortgage broker branch office license? Yes. You may add a trade name, or "DBA" name, to the mortgage broker branch office license if you first apply to the department, in a form prescribed by the director, and receive department approval. The branch office trade name must at all times be identified as connected with the mortgage broker's license name as it appears on the mortgage broker license. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

(a) Use your license name together with the branch office trade name; or

(b) Use the branch office trade name and mortgage broker branch office license number together.

(c) See WAC 208-660-180(10).

(15) How must I identify my mortgage broker branch office(s)? The branch office must be prominently identified as a branch or division of the licensed mortgage broker so as not to appear to be an independent enterprise.

(16) Does my branch office have to be a physical location? Yes. The physical location may be at a commercial or residential address but does not have to be in Washington. See WAC 208-660-420, Out-of-state mortgage brokers and loan originators.

(17) Must I have a branch manager? No. Although you may appoint one, the act does not require a branch manager. The licensee and designated broker are responsible for the business conducted at all locations.

(18) Must I have a designated broker at each branch? No. The licensed mortgage broker may have only one designated broker who is responsible for the mortgage broker business at all locations.

WAC 208-660-250 Designated brokers--General. (1) How do I become a designated broker?

(a) Be eighteen years or older.

(b) Have a high school diploma, an equivalent to a high school diploma, or two years experience in the industry in addition to the experience required in (e) of this subsection. The experience must meet the criteria in (e) of this subsection.

(c) You must pass the designated broker test. See WAC 208-660-260, Designated brokers--Testing.

(d) You must be appointed to the designated broker position by the licensed mortgage broker through an application and approval process with the department and the NMLSR.

(e) You must have a minimum of two years experience lending or originating residential mortgage loans.

(i) The work experience must be in one or more of the following, within the last five years:

(A) As a mortgage broker or designated broker of a mortgage broker for a minimum of two years; or

(B) As a mortgage banker, responsible individual, or manager of a mortgage banking business; or

(C) As a loan originator with responsibility primarily for originating loans secured by a lien on residential real estate; or

(D) As a branch manager of a lender with responsibility primarily for loans secured by a lien on residential real estate; or

(E) As a manager or supervisor of mortgage loan originators; or

(F) As a mortgage processor, underwriter, or quality control professional; or

(G) As a regulator, examiner, investigator, compliance expert, or auditor, whose primary function is the review of mortgage companies and their compliance processes, and the department determines your background is sufficient.

(ii) The work experience must be evidenced by a detailed work history and:

(A) W-2 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(B) 1099 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(C) Corporate tax returns signed by the designated broker appointee or corporate officer for a licensed or exempt residential mortgage company; or

(f) In addition to supplying the application information, both you and the licensed mortgage broker must be in good standing with the department.

(g) **Financial background.**

(i) You are not eligible to become a designated broker if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

(ii) You may not be eligible to become a designated broker if your financial background during the two years prior to the appointment application shows a history of unpaid debts.

(2) **May I work as the designated broker for more than one company?** Yes. You may be the designated broker for more than one licensee.

(3) **Must the designated broker ((also)) hold a loan originator's license?** Yes. A designated broker approved by the department will be given a loan originator license if they do not already have one. If the designated broker already has a loan originator license, that license will be added to the licensed mortgage broker's list of loan originators.

(4) **May I work as the designated broker for one licensee and a licensed loan originator for another licensee?** Yes. If you want to originate loans for a mortgage broker different from the mortgage broker for whom you are the designated broker, you must apply to the department for an additional loan originator license.

(5) **May a designated broker hire employees or independent contractors apart from the employees or independent contractors working for the mortgage broker licensee?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against a designated broker having employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

(6) **As a designated broker, what reporting requirements must I comply with?** See WAC 208-660-400, Reporting requirements.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-260 Designated brokers--Testing. (1) **Must I pass a test prior to becoming a designated broker?** Yes. You must take and pass a test prior to becoming a designated broker. See WAC 208-660-250(1) if you have never been a designated broker.

(2) **I am currently a designated broker, will I have to take the test again?** You will only have to take the designated broker test again if you stop working as a designated broker for five years or longer.

(3) **I am currently a designated broker that originates loans. Will I have to take the loan originator test and obtain a loan originator license?** No. The department will provide you with a loan originator license automatically because you are a designated broker. Your loan originator license will renew in conjunction with the renewal of the mortgage broker main office you work with. If you stop acting as a designated broker, your loan originator license will become inactive. See WAC 208-660-350(12). You can

reactivate the license by becoming affiliated with the same or another licensed mortgage broker as a loan originator. If you do not renew your license as provided in WAC 208-660-350(19), the license will expire.

(4) **Where can I get information about the designated broker test?** The department will publish the names and contact information of approved testing providers on the department web site.

(5) **What topics may be covered in the designated broker test?** ~~((The department will publish a list of designated broker test topics on the department's web site.))~~ See WAC 208-660-600.

(6) **How soon after failing the designated broker test may I take it again?** After failing the test three consecutive times you must wait at least fourteen days before taking the test again.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-300 Loan originators--General. (1) **May I work as a loan originator for more than one mortgage broker?** Yes.

(2) **How do I obtain approval to work for more than one mortgage broker?** ~~((Use the form prescribed by the director to get approval to add mortgage broker relationships to your license.))~~ Using the NMLSR, the company will submit a sponsorship request. The department will notify you ~~((if the))~~ when the relationship is ~~((not))~~ approved. The department will notify you and others associated with your license upon approval of your request. The ~~((application must include))~~ NMLSR will charge a fee for the additional relationship. See WAC 208-660-550.

(3) **If I work as a loan originator for more than one mortgage broker, may I take an application from a borrower without identifying one specific mortgage broker?** No. You may take an application for only one mortgage broker at a time in any one transaction. Prior to presenting yourself to a specific borrower as licensed to originate mortgage loans, you must state who you represent. You must clearly identify the mortgage broker by name and address on the application, on all disclosures, authorization forms, and other material provided to the borrower. There must be no confusion by the borrower as to which mortgage broker you are representing at any given time.

(4) **May I work from any location when I am a licensed loan originator?** No. You can only work from a licensed location. The licensed location can be the main company office, or any licensed branch.

(5) **May a loan originator transfer loan files to a mortgage broker other than the mortgage broker the loan originator is associated with?** No. Only the borrower may submit a written

request to the licensed mortgage broker to transmit the borrower's selected information to another mortgage broker or lender. Loan files are the property of the mortgage broker named on the loan application and the mortgage broker must keep the original files and documents. The licensed mortgage broker must transmit the information within five business days after receiving the borrower's written request.

((+5+)) **(6) May I act as a loan originator and a real estate agent in the same transaction or for the same borrower in different transactions?** Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction, or for the same borrower in different transactions. When either of these occur, you must provide to the borrower the following written disclosure:

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS, AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER, OR LENDER OF YOUR CHOOSING."

((+6+)) **(7) As a loan originator, may I be paid directly by the borrower for my services?** No. As a loan originator, you may not be paid any compensation or fees directly by the borrower.

((+7+)) **(8) May a loan originator charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. A loan originator may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan.

((+8+)) **(9) As a loan originator, may I be paid my portion of the mortgage broker fee directly from the loan closing?**

(a) Yes. If authorized in the mortgage broker's demand, the settlement service provider may pay your portion of the mortgage broker fee directly to you; provided however, that the HUD-1 or equivalent settlement statement has the following information:

(i) Your name as it appears on your loan originator license;
(ii) Your loan originator license number; and
(iii) The amount to be paid to you by the settlement service provider.

(b) You must provide a copy of the HUD-1 or equivalent settlement statement to the licensed mortgage broker within twenty-four hours of your receipt of funds from closing.

~~((+9+))~~ (10) May a loan originator bring a lawsuit against a borrower for the collection of compensation? No. Only licensed mortgage brokers, or exempt mortgage brokers, may bring collection actions against borrowers to collect compensation.

~~((+10+))~~ (11) May I work as a licensed loan originator for a mortgage broker located out of the state? Yes. You may originate loans for any mortgage broker you are affiliated with who is licensed under Washington law.

~~((+11+))~~ (12) May a licensed loan originator hire employees or independent contractors to assist in the mortgage broker licensee's activities? No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

~~((+12+))~~ (13) Do loan processors have to be licensed as loan originators? ~~((No.))~~ W-2 employee loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed or exempt mortgage broker and do not hold themselves out as able to conduct the activities of a mortgage broker or loan originator. ~~((However, a))~~ Independent contractor loan processors ~~((may not work as an independent contractor unless))~~ must be licensed as a mortgage broker, mortgage broker branch office, or loan originator.

(14) May loan processors work on files from an unlicensed location? A loan processor may work on loan files from an unlicensed location under the following circumstances:

(a) The loan files are in electronic format and the loan processor accesses the files directly from the licensed mortgage broker's main computer system. The loan processor may not maintain any electronic files on any computer system other than the system belonging to the licensed mortgage broker.

(b) The loan processor does not conduct any of the activities of a licensed loan originator.

(c) The licensed mortgage broker must have safeguards in place for the computer system that safeguards borrower information.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-350 Loan originators--Licensing. (1) How do I apply for a loan originator license? Your application consists of an on-line filing through the NMLSR and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR system.

(a) Be eighteen years or older.

(b) Have a high school diploma, an equivalent to a high school

diploma, or three years experience in the industry. The experience must meet the criteria in WAC 208-660-250 (1)(e)(i) and (ii).

(c) **Pass a licensing test.** You must take and pass a test that assesses your knowledge of the mortgage business and related regulations. See WAC 208-660-360, Loan originators--Testing.

(d) **Submit an application.** ~~((The application form will be prescribed by the director.))~~ You must complete an application in a form prescribed by the director.

(e) **Prove your identity.** You must provide information to prove your identity.

(f) **Pay the application fee.** You must pay an application fee ~~((to cover the department's cost of processing and reviewing))~~ for your application(s). See WAC 208-660-550, Department fees and costs.

(2) In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction.

(b) **License suspensions or revocations.** You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended or revoked within five years of the filing of the present application.

(c) **Criminal history.**

You are not eligible for a loan originator license if you have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony, within seven years of the filing of the present application.

(d) **Financial background.**

(i) You are not eligible to receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

(ii) You may not be eligible to receive a loan originator license if your financial background during the two years prior to the appointment application shows a history of unpaid debts.

(3) ~~((May I originate residential mortgage loans in Washington without a loan originator license? Persons conducting the business of a loan originator without an active loan originator license must fall under one of the following categories of exemption from loan originator licensing:~~

~~(a) Persons conducting residential mortgage loan business exclusively for any exempt person under RCW 19.146.020 (1)(a)(i);~~

or

~~(b) The exclusive agents conducting residential mortgage loan business for any exempt person under RCW 19.146.020 (1) (a) (ii); or~~

~~(c) The bona fide employees conducting residential mortgage loan business exclusively for any exempt person under RCW 19.146.020 (1) (b), (e), (g) or (h); or~~

~~(d) Those persons exempt under RCW 19.146.020 (1) (c) or (d).~~

~~((4))~~ **What will happen if my loan originator license application is incomplete?** After submitting your on-line application through the NMLSR, the department will ((reject and return the entire application package to you with a notice identifying the incomplete, missing, or inaccurate information. You must follow the department's directions to correct the problems. You may then resubmit the application package)) notify you of any application deficiencies.

~~((5))~~ **(4) How do I withdraw my application for a loan originator license?** ~~((Provide the department with a written request to withdraw your application in a form prescribed by the director.))~~ Once you have submitted the on-line application through NMLSR you may withdraw the application through NMLSR. You will not receive a refund of the NMLSR application fee.

~~((6))~~ **(5) When will the department consider my loan originator license application to be abandoned?** If you do not respond within ten business days to the department's second request for information, your loan originator license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

~~((7))~~ **(6) What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?**

(a) The department will notify you if your application is denied. ~~((You will receive a refund of any unused portion of the application fee.))~~

(b) If your license application lists any mortgage brokers, the department will also notify the mortgage brokers of the license denial.

(c) Under the Administrative Procedure Act, chapter 34.05 RCW, you have the right to request brief adjudicative proceeding. To request a hearing, notify the department, in writing, within twenty days from the date of the director's notice to you notifying you your license application has been denied.

(i) Brief Adjudicative Proceeding Adopted. The director adopts RCW 34.05.482 through 34.05.494 to administer brief adjudicative proceedings under WAC 208-660-350.

(ii) Presiding Officer. Brief adjudicative proceedings are conducted by a presiding officer designated by the director. The presiding officer must have department expertise in the subject matter, but must not have personally participated in the department's licensing application denial, or work in the department's division of consumer services, or such other division

within the department delegated by the director to oversee implementation of the act and these rules.

(iii) Preliminary Records. The preliminary record for the brief adjudicative proceeding consists of the application and all associated documents including all documents relied upon by the department to deny the application and all correspondence between the applicant and the department regarding the application.

(iv) Notice of Hearing. The department will set the date, time, and place of the hearing, giving at least seven business days notice to the applicant.

(v) Written Documents. The applicant or their representatives may present written documentation. The presiding officer must designate the date for submission of written documents.

(vi) Oral Argument. The presiding officer may exercise discretion in allowing oral argument.

(vii) Witnesses. Witnesses will not be allowed to testify.

(viii) Agency Expertise Considered. The presiding officer may rely upon agency expertise in addition to the written record as a basis for a decision.

(ix) Initial Order. The presiding officer must make a written initial order within ten business days of the final date for submission of materials, or oral argument, if any. The initial order will become final twenty-one days after service on the applicant unless the applicant requests an administrative review or the department decides to review the matter.

~~((+8+))~~ **(7) How will the department provide me with my loan originator license?** The department may use any of the following methods to provide you with your loan originator license:

(a) A printed paper license sent to you by regular mail.

(b) A license sent to you electronically that you may print.

(c) A license verification available on the department's web site and accessible for viewing by the public.

~~((+9+))~~ **(8) May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

~~((+10+))~~ **(9) How do I change information on my loan originator license?** ~~((You must file a license amendment application with the department, in a form prescribed by the director within thirty days of the change occurring.~~

~~((11))~~ **If I am not required to have a loan originator license to do my job, may I apply for and receive a loan originator license?** ~~Yes, you may apply for a license at any time. However, if you are not required to hold the license to conduct the activities of your job, your license will be considered inactive.~~

~~((12+))~~ **You must submit an amendment to your license through the NMLSR. You may be charged a fee.**

(10) What is an inactive loan originator((-s)) license? ~~((If an individual holds a loan originator license when they are not required to under the act, they hold an inactive license))~~ **When a licensed loan originator is not sponsored by a licensed or exempt**

company, the license is inactive. When a person ((holding)) holds an inactive license, they may not conduct any of the activities of a loan originator, or hold themselves out as a licensed loan originator.

((+13+)) **(11) When my loan originator(+s) license is inactive, am I subject to the director's enforcement authority?** Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.

((+14+)) **(12) When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

((+15+)) **(13) May I originate loans from a web site when my license is inactive?** No. You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive(~~(, except as allowed in subsection (3) of this section)~~).

((+16+)) **(14) How do I activate my loan originator license?** ~~((When the department receives a notice, in a form prescribed by the department, from a licensed or exempt mortgage broker establishing a working relationship with you, your loan originator license will become active.))~~ The sponsoring company must submit a sponsorship request for your license through the NMLSR. The department will notify you and all ((mortgage brokers)) the companies you are working with of the new working relationship ((established by the licensed mortgage broker)) if approved.

((+17+)) **(15) When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

For purposes of this section, undue delay includes the adjustment of license expiration or renewal dates to coincide with the implementation of systems designed to assist in uniformity and provide data repositories of licensing information.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the results of the applicant's background check.

((+18+)) **(16) When does my loan originator license expire?** The loan originator license expires annually on December 31st. ~~((The expiration date is shown on the license.))~~ If the license is an interim license, it may expire in less than one year.

((+19+)) **(17) How do I renew my loan originator license?**

(a) Before the license expiration date you must renew your license through the NMLSR. Renewal consists of:

- (i) Pay the annual assessment fee; and
- (ii) Meet the continuing education requirement.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

~~((+20+))~~ **(18) If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal within forty-five days of the expiration date you may renew an existing license. However, if you renew your license during this forty-five day period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection ~~((+19+))~~ **(17)** of this section for the license renewal requirements.

During this forty-five day period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp within the forty-five days. If you fail to comply with the renewal request requirements within forty-five days, you must apply for a new license.

~~((+21+))~~ **(19) If I let my loan originator license expire and then apply for a new loan originator license within one year of the expiration, must I comply with the continuing education requirements from the prior license period?** Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

~~((+22+))~~ **(20) May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

~~((+23+))~~ **(21) What happens to the loan applications I originated before my loan originator license expired?** Existing loan applications must be processed by the licensed mortgage broker or another licensed loan originator working for the mortgage broker.

~~((+24+))~~ **(22) May I surrender my loan originator's license?** Yes. Only you may surrender your license before the license expires ~~((by notifying the department, in a form prescribed by the department))~~ through the NMLSR.

~~((Surrender of))~~ Surrendering your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omission occurring before the license surrender.

~~((+25+))~~ **(23) Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the mortgage broker company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

~~((+26+))~~ **(24) If I operate as a loan originator on the internet, must I display my license number on my web site?** Yes. You must display your license number, and the license number and name as it appears on the license of the licensed mortgage broker

you represent, on the web site.

~~((+27+))~~ **(25) Must I include my loan originator license number on any documents?** You must include your license number immediately following your name on solicitations, including business cards, advertisements, and residential mortgage loan applications.

~~((+28+))~~ **(26) When must I disclose my loan originator license number?** In the following situations you must disclose your loan originator license number and the name and license number of the mortgage broker you are associated with:

(a) When asked by any party to a loan transaction, including third party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

(27) May I conduct business under a name other than the name on my loan originator license? No. You must only use the name on your license when conducting business. If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-360 Loan originators--Testing. (1) Must I pass a test prior to becoming a loan originator? Yes. You must take and pass a test prior to becoming a loan originator. You must receive a score of seventy-five percent or higher to pass the test.

(2) Where may I find information about the loan originator test? The department will publish the names and contact information of approved testing providers on the department web site.

(3) How much does the loan originator test cost? Testing costs are set by contract between the test provider and the department and may be modified from time to time. The department will publish the current testing fee with the testing provider contact information.

(4) How do I register to take the loan originator test? The department will publish registration information with the testing provider contact information.

(5) What topics may be covered in the loan originator test? ~~((The department will publish a list of loan originator))~~ At a minimum, the test topics ((on the department's web site)) will include ethics, federal and state law and regulation pertaining to mortgage origination, federal and state law and regulation on fraud, consumer protection, nontraditional mortgage products, and

fair lending. See WAC 208-660-600.

(6) **After passing the loan originator test, will I have to take it again?** You must retake the loan originator test if you have not been a loan originator within the past five years.

(7) **How soon after failing the loan originator test may I take it again?** After taking and failing the test three consecutive times, you must then wait at least fourteen days before taking the test again.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-370 Loan originators--Continuing education. (1) **Where may I get information about continuing education for loan originators?** The department will publish a list of the approved professional organizations that provide continuing education, and approved individual courses on the department's web site. The professional organizations will have detailed information about the continuing education courses they offer. See also WAC 208-660-600.

(2) **How many clock hours of loan originator continuing education must I have each year?** (~~The continuing education requirement will be in the form of approved courses. While the individual clock hours may vary,~~) You must complete ((two courses, of no less than three hours each, annually. Alternatively, you may attend three mortgage broker commission meetings instead of completing one continuing education course)) a minimum of eight hours annually.

(3) **As a loan originator, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) **If I teach an approved continuing education course may I use my course as credit toward my annual loan originator continuing education requirement?** Yes. As an instructor of an approved continuing education course, you may receive credit for your annually required loan originator continuing education courses from the course(s) you teach. You will receive credit at the rate of one course taught equaling two continuing education course credits.

(5) **How do I receive credit toward my continuing education requirement when I teach an approved continuing education course?** When you renew your license and seek to get credit for continuing education, submit to the department documentation evidencing approval of the continuing course you taught. The department will credit you with completing two continuing education courses for each one approved course you teach.

(6) **Is ethics a required continuing education course for loan**

originators? Yes. You must take ~~((an ethics continuing education course in your first year of holding a loan originator license. However, if you teach an approved continuing education course on ethics during your first year of holding a loan originator license, that will satisfy your ethics continuing education requirement for that year))~~ at least two ethics hours annually. The annual ethics credits must include the topics of fraud, consumer protection, and fair lending.

(7) If I take a loan originator continuing education course approved for multiple jurisdictions, will the department accept it as part of my continuing education requirement? ~~((If any state has continuing education requirements or standards at least as stringent as Washington's, their continuing education courses may be approved by the department as meeting the continuing education requirements under the act and these rules.))~~ Yes. There will be continuing education courses that meet the requirements for all states.

(8) If I accumulate more than the required loan originator continuing education course credits during a year, may I carry-over the excess credit to the next year? No. Continuing education credits only apply to the year in which they are taken.

(9) If I fail to complete the required continuing education, what happens to my loan originator license? When your license expires, the department will not renew it, and you cannot continue conducting any business under the act. See WAC 208-660-350~~((+20))~~ (18) to renew your license within forty-five days of it expiring. See also, WAC 208-660-350~~((+21))~~ (19).

(10) How will I know which courses and providers satisfy the continuing education requirement? The department will approve continuing education courses offered by course providers and will approve professional organizations offering courses. The providers, courses, and contact information will be listed on the department's web site.

(11) How do I provide the department with proof of the continuing education courses I have completed? You must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

(12) If the department reissues my license and the new expiration date does not coincide with the prior annual assessment period, will the department still give me credit for the continuing education courses I have taken in preparation for meeting the prior annual assessment date? Yes. The department will give you credit for the continuing education courses you have taken. You will not lose any credits due to the department's license expiration date adjustment.

WAC 208-660-400 Reporting requirements and notices to the department. (1) **As a licensed mortgage broker, what annual report must I provide to the department?** You must file a mortgage broker annual report, in a form prescribed by the director. The report must include:

(a) The total number of residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year; and

(b) The total dollar volume (principal loan amounts) of the residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year.

(2) **When must I provide the mortgage broker annual report to the department?** You must provide the completed report to the department by March 31st of each year. The first annual report, for activity occurring in 2007, must be received by the department before or on March 31, 2008.

(3) **What period of time must the mortgage broker annual report cover?** The mortgage broker annual report must cover the prior calendar year from January 1st to December 31st.

(4) **What action will the department take if I fail to file my mortgage broker annual report?**

(a) When the report is over thirty days late, the department may begin an enforcement action against you.

(b) When your license is due for renewal, the department will not renew it if you have not filed your annual report.

(5) **How do I notify the department when I want to change information on my mortgage broker or loan originator license?** You must file a license amendment (~~(application with the department, in a form prescribed by the department)~~) through the NMLSR within thirty days of the change occurring.

(6) **As a designated broker or loan originator, must I notify the department if I change my residential address or telephone number?** Yes. Whether your license is active or inactive, you must notify (~~(the department in a form prescribed by)~~) the department, through the NMLSR, within thirty days of a change in your residential address and telephone number.

(7) **As a designated broker or loan originator must I notify the department if I change my name?** Yes. Whether your license is active or inactive, you must notify the department (~~(in a form prescribed by the department)~~), through NMLSR, within thirty days of a name change.

(8) **Must I notify the department of the physical address of my mortgage broker books and records?** Yes. You must provide the physical address of your mortgage broker books and records in your initial license application through NMLSR. If the location of your books and records changes, you must provide the department, (~~(in a form prescribed by the department)~~) through the NMLSR, with the new physical address within five business days of the change.

(9) **Must I notify the department if my designated broker leaves, or is no longer my designated broker?** Yes. You must notify the department, ~~((in a form prescribed by the department))~~ through NMLSR, within five business days of the loss of or change of status of your designated broker. See WAC 208-660-180(3).

(10) **When and how do I change the information about my registered agent?** Within five business days of the change, you must file a statement of change ~~((with the department, in a form prescribed by the department))~~ through the NMLSR.

(11) **If I am a registered agent under the act, must I notify the department if I resign?** Yes. You must provide the department with your statement of resignation letter at least thirty-one days prior to the intended effective date. You must also provide a copy of the resignation letter to the licensed mortgage broker. The department will terminate your appointment thirty-one days after receiving your resignation letter.

(12) **Must I notify the department if I change the business structure of my company? When must I notify the department?** If the change to your business adds officers, directors, or principal stockholders owning ten percent or more of the company, you must notify the department, ~~((in a form prescribed by the department))~~ through the NMLSR, at least thirty days prior to the change. The department will consider the qualifications of the new people and notify you whether or not the proposed change is acceptable. You may have to submit fingerprint cards for new controlling people directly to DFI.

(13) **What are my responsibilities when I sell my business?**

(a) At least thirty days prior to the effective date of sale, you must notify the department of the pending sale ~~((, in a form prescribed by the director.~~

~~(b) You must surrender your license and complete the year's annual report.~~

~~(c))~~ by completing the following: Update and file all required information through the NMLSR for your main and any branch offices, including updating information about the location of your books and records.

(b) You must give written notice to borrowers whose applications or loans are in process, advising them of the change in ownership.

~~((d))~~ (c) You must give written notice to third party providers that have or will provide services on loans in process, and all third-party providers you owe money to, bringing accounts payable current.

~~((e) You must maintain your records as required under the act and these rules.~~

~~(f))~~ (d) Surrender all physical licenses to DFI.

(e) You must reconcile the trust account and return any funds to the borrowers or others to whom they belong, or transfer funds into a new trust account at the borrower's direction. If excess funds still remain and are unclaimed, follow the procedures provided by the department of revenue's unclaimed property division.

(14) **Must I notify the department if I cease doing business in this state?** Yes. You must notify the department within twenty days after you cease doing business in the state by updating your record and filing a surrender through the NMLSR, and filing your Mortgage Broker ((Closure Form and the)) annual report directly with DFI.

(15) **Must I notify the department of changes to my trust account?** Yes. You must notify the department within five business days of any change in the status, location, account number, or other particulars of your trust account, made by you or the federally insured financial institution where the trust account is maintained. A change in your trust account includes the addition of a trust account.

(16) **Must I notify the department of changes to my Washington master business license?** Yes. You must notify the department within five business days of any changes to your Washington master business license made by you or the agency issuing the license.

(17) **Must I notify the department of changes to my standing with the Washington secretary of state?** Yes. You must notify the department within five business days of any changes to your standing with the Washington secretary of state made by you or the secretary of state.

(18) **What must I do if my licensed mortgage broker company files for bankruptcy?**

(a) Chapter 7 bankruptcy. If you are a licensed mortgage broker that files for a Chapter 7 bankruptcy, you must:

(i) Notify the director and surrender your mortgage broker license within ten business days of filing the bankruptcy.

(ii) Provide the department with a mortgage broker annual report for the calendar year preceding the filing within ten business days of filing the bankruptcy.

(b) Chapter 11 bankruptcy. If your licensed mortgage broker company files for a Chapter 11 bankruptcy, you must notify the director within ten business days of filing the bankruptcy.

(c) Chapter 13 bankruptcy. If your licensed mortgage broker company files for a Chapter 13 bankruptcy, you must:

(i) Notify the director and surrender your mortgage broker license within ten business days of filing the bankruptcy.

(ii) Provide the department with a mortgage broker annual report for the calendar year preceding the filing within ten business days of filing the bankruptcy.

(19) **If I am a designated broker and file for personal bankruptcy, what are my reporting responsibilities?** A designated broker must notify the department in writing within ten business days of filing for bankruptcy protection.

(20) **If I am a designated broker and file for personal bankruptcy, what action may the department take?** The director may require the licensed mortgage broker to replace you with another designated broker.

(21) **If I am a loan originator and file for personal bankruptcy, what are my reporting responsibilities?** A licensed

loan originator must notify the director in writing within ten business days of filing for bankruptcy protection.

(22) **If I am a loan originator and file for personal bankruptcy, what action may the department take?** Depending on the circumstances, the director may revoke or condition your license.

(23) **When may I apply for a license after surrendering one due to my personal bankruptcy filing?** If you surrendered your license, you may apply for a license at any time. However, the department may deny your license application for three years after the bankruptcy has been discharged provided that no new bankruptcies have occurred or are in progress.

(24) **When may I apply for a license after the department has revoked my license due to my personal bankruptcy filing?** The director will not issue a license to any person who has had their license revoked within five years of applying. While you may apply at any time, the application will be denied until the five years have elapsed. For this reason it is important for you to consider a surrender of your license rather than allowing it to be revoked.

(25) **Who in the mortgage broker company must notify the department if they are charged with or convicted of a crime?** Licensees, whether on active or inactive license status, must notify the department in writing within ten business days of being:

(a) Charged by indictment or information with any felony, or a gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(b) Convicted of any felony, or any gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(c) Convicted outside of Washington for any crime that if charged in Washington would constitute a felony, or gross misdemeanor for dishonesty or financial misconduct.

(26) **Who in the mortgage broker company must notify the department if they are the subject of an administrative enforcement action?** Licensees, whether holding active or inactive licenses, must notify the department in writing within ten business days of the occurrence if:

(a) Charged with any violations by an administrative authority in any jurisdiction; or

(b) The subject of any administrative action, including a license revocation action, in any jurisdiction.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-420 Out-of-state mortgage brokers and loan originators. (1) **May I be a licensed mortgage broker in Washington without a physical office in Washington?** Yes. You are not required by the act to have a physical location in Washington.

(2) **May I be a licensed mortgage broker in Washington and have**

branch offices both in Washington and outside of Washington? Yes. However, each of your branch offices that offer Washington residential mortgage loans must hold a Washington license, even if the location is outside Washington.

(3) May my mortgage broker business be conducted entirely on the internet? Yes. But you must have a license for all locations including those that offer loans by mail or internet.

(4) May I work as a loan originator in Washington if I do not have a physical location in Washington? Yes. You may originate Washington loans from any location licensed under the act, inside or outside of Washington.

(5) May I work as a licensed loan originator for a mortgage broker that is out of the state? Yes, as long as the location from which you work is licensed under the act.

(6) If my mortgage broker business is not located in Washington, where must I keep my records? If your business is located outside of Washington, you may either maintain the books and records at a location in Washington, or pay the department's travel expenses to the out-of-state location to examine the books and records. Travel expenses may include, but are not limited to, transportation, meals, and lodging.

(7) What additional requirements must I comply with if my business does not have a physical location in Washington? You must continuously maintain a registered agent in Washington and provide the department with the registered agent's name, physical and mailing address, and written consent to be the registered agent.

(8) How do I change the information about my registered agent? You must ~~((file a statement of change with the department))~~ update the information in the NMLSR within five business days from the change. ~~((The statement of change must contain:~~

~~(a) Your name and license number.~~

~~(b) If the agent's office location has changed, the new physical address.~~

~~(c) If the registered agent has changed, the name and physical address of the new registered agent. The director will send a request directly to the new agent to obtain written consent to the appointment.))~~

(9) If I am a registered agent under the act, what must I do to resign as registered agent?

(a) Provide the department with a statement of resignation at least thirty-one days prior to the intended effective date of your resignation.

(b) Provide a copy of the statement of resignation to the licensed mortgage broker.

(c) The department will terminate your appointment on the thirty-first day after the date on which the statement of resignation was delivered.

(10) Where must the director initiate lawsuits arising under the act against out-of-state licensees? Lawsuits initiated by the director under the act must be initiated in the superior court of Thurston county, Washington.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-430 Disclosure requirements. (1) What disclosures must I make to borrowers and when? Within three business days of receiving a borrower's loan application, or receiving money from a borrower for third-party provider services, you, as a mortgage broker or loan originator on behalf of a mortgage broker, must make all disclosures required by RCW 19.146.030 (1), (2), ~~((and))~~ (3), and 19.144.020. The one page disclosure summary required by RCW 19.144.020 must be dated when provided to the borrower. The disclosures must be in a form acceptable to the director.

(2) What is the disclosure required under RCW 19.146.030(1)? A full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker. A good faith estimate of a fee or cost must be provided if the exact amount of the fee or cost is not determinable. This subsection does not require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

The specific content of the disclosure required under RCW 19.146.030(1) is identified in RCW 19.146.030(2).

(3) What is the disclosure required under RCW 19.146.030(2)? Mortgage brokers must disclose the following content:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase.

Disclosure in compliance with the requirements of the Truth-in-Lending Act and Regulation Z, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of RESPA and Regulation X, as now or

hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(c) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in agreement has not been entered, disclosure in a form acceptable to the director that the disclosed interest rate and terms are subject to change;

(d) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower, to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent;

(e) Whether and under what conditions any lock-in fees are refundable to the borrower; and

(f) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

(4) (~~How do I disclose my mortgage broker fees on the good faith estimate and settlement statement? You must disclose or direct the disclosure of your fees on lines 808 through 811 of the good faith estimate and HUD-1/1A settlement statement or similar document.~~) **What is the disclosure required under RCW 19.144.020?** See WAC 208-600-200.

(5) **How do I disclose my yield spread premium (YSP) from the lender?**

(a) You should disclose the YSP in the 800 series of lines on the GFE. The YSP must be listed using the words "yield spread premium" and expressed as a dollar amount or dollar amount range.

(b) You must direct the settlement service provider to disclose the YSP in the 800 series of lines on the HUD-1 or equivalent settlement statement. The YSP must be listed using the words "yield spread premium" and expressed as a dollar amount (~~or dollar amount range~~).

(c) Failure to properly disclose the yield spread premium (YSP) is a violation of RCW 19.146.0201 (6) and (11), and RESPA.

(6) **Are there additional disclosure requirements related to interest rate lock-ins?** Yes. Pursuant to RCW 19.146.030(3), if subsequent to the written disclosure being provided under this section, a mortgage broker or loan originator enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, then within three business days the mortgage broker or loan originator must deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement, which must include a copy of the disclosure made under subsection (3)(c) of this section.

(7) **What must I disclose to the borrower if they do not choose to enter into a lock-in agreement?** If a lock-in agreement has not

been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change.

(8) Will a lock-in agreement always guarantee the interest rate and terms? No. A lock-in agreement may or may not be guaranteed by the mortgage broker or lender. The lock-in agreement must clearly state whether the lock-in agreement is guaranteed by the mortgage broker or lender.

(9) Must a mortgage broker enter into a lock-in agreement with a borrower? No. The statute does not require a mortgage broker to enter into a lock-in agreement with a borrower.

(10) Are there any model forms that suffice for the disclosure content under RCW 19.146.030(2)? Yes. The following model forms are acceptable forms of disclosure:

(a) For RCW 19.146.030 (2) (a), mortgage brokers are encouraged to use the federal truth-in-lending disclosure form for mortgage loan transactions provided under the Truth-in-Lending Act and Regulation Z, as now or hereafter amended. However, the federal truth-in-lending disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(a). The delivery of disclosures is governed by RCW 19.146.030(1).

(b) For RCW 19.146.030 (2) (b), mortgage brokers are encouraged to use the federal good faith estimate disclosure form provided under the Real Estate Settlement Procedures Act and Regulation X, as now or hereafter amended. However, the federal good faith estimate disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(b). The delivery of disclosures is governed by RCW 19.146.030(1).

(c) For RCW 19.146.030 (2) (c), (d), (e), (f) and (3), the department encourages mortgage brokers to use the department published model disclosure forms that can be found on the department's web site.

(11) May my mortgage broker fees increase following the disclosures required under RCW 19.146.030(1)? Pursuant to RCW 19.146.030(4), a mortgage broker must not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the initial written good faith estimate disclosure required in RCW 19.146.030 (1) and (2)(b), unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

(b) The mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

(12) Are there any situations in which fees that benefit the mortgage broker can increase without additional disclosure? Yes, there are two possible situations where an increase in the fees benefiting the mortgage broker may increase without the requirement to provide additional disclosures. These situations are:

(a) The additional disclosure is not required if the borrower's closing costs, excluding prepaid escrowed costs of ownership, on the final settlement statement do not exceed the total closing costs, excluding prepaid escrowed costs of ownership,

in the most recent good faith estimate provided to the borrower. For purposes of this section "prepaid escrowed costs of ownership" mean any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan; or

(b) The fee or set of fees that benefit the mortgage broker are disclosed as a percentage of the loan amount and the increase in fees results from an increase in the loan amount, provided that:

(i) The increase in loan amount is requested by the borrower; and

(ii) The fee or set of fees that are calculated as a percentage of the loan amount have been disclosed on the initial written disclosure as both a percentage of the loan amount and as a dollar amount based upon the assumed loan amount used in the initial written disclosure; and

(iii) The total aggregate increase in the fee or set of fees that benefit the mortgage broker as a result of the increase in loan amount is less than seven hundred fifty dollars.

This section does not apply to the disclosure required in RCW 19.144.020.

(13) **What action may the department take if I disclose my mortgage broker fees on the good faith estimate and HUD-1/1A statement on lines other than 808 through 811?** If you fail to disclose your mortgage broker fees as required, the department may request, direct, or order you to refund those fees to the borrower. For example, if you disclose your mortgage broker fees as loan origination fees or discount points, the department may find that this is a deceptive practice and take action against you as indicated.

(14) **May the department take action against a mortgage broker when mortgage broker fees are disclosed incorrectly on the HUD-1/1A and the incorrect disclosure was made by an independent escrow agent, title company, or lender?** If the mortgage broker can show the department that they disclosed their fees correctly on the good faith estimate, and have instructed the independent escrow agent, title company, or lender to disclose the fees correctly on the HUD-1/1A, and the independent escrow agent, title company, or lender has not followed the instructions, the department may not take action against the mortgage broker.

(15) **What action may the department take if I fail to provide additional disclosures as required under RCW 19.146.030(4)?** Generally, the department may request, direct, or order you to refund fees.

(16) **How will the department determine whether to request, direct or order me to refund fees to the borrowers?** Generally, the department will make its determination by answering the following questions:

(a) Has an initial good faith estimate disclosure of costs been provided to the borrower in accordance with RCW 19.146.030 (1) and (2) (b)?

(b) Were any subsequent good faith estimate disclosures of costs provided to the borrower no less than three business days

prior to the signing of the loan closing documents? Additionally, was the subsequent disclosure accompanied by a clear written explanation of the change?

(c) How were the costs disclosed in each good faith estimate (e.g., dollar amount, percentage, or both)?

(d) Did the total costs, excluding prepaid escrowed costs of ownership, on the final settlement statement exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower no less than three business days prior to the signing of the loan closing documents?

(e) If the costs at closing did exceed the most recent disclosure of costs was the need to charge the fee reasonably foreseeable at the time the written disclosure was provided?

(f) If the costs at closing did exceed the most recent disclosure of costs did the mortgage broker provide a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed, no less than three business days prior to the signing of the loan closing documents?

(17) If I failed to provide the initial good faith estimate or TILA disclosure under RCW 19.146.030 (1) and (2)(a) and (b) what action may the department take? If you have not provided the initial good faith estimate or TILA disclosure as required, including both delivery and content requirements, the department may request, direct or order you to refund to the borrower fees that inured to your benefit.

(18) If I received trust funds from a borrower, but failed to provide the disclosures as required in RCW 19.146.030 (1) and (2), what action may the department take? If you did not provide the disclosures as required, including both delivery and content requirements, the department may request, direct, or order you to refund to the borrower any trust funds they have paid regardless of whether you have already expended those trust funds on third-party providers.

(19) Under what circumstances must I redisclose the initial disclosures required under the act? Generally, any loan terms or conditions that change must be redisclosed to the borrower no less than three business days ~~((7))~~ prior to ~~((closing, to the borrower))~~ the signing of the loan closing documents. Some examples are:

(a) Adjustable rate loan terms, including index, margin, and any changes to the fixed period.

(b) The initial fixed period.

(c) Any balloon payment requirements.

(d) Interest only options and any changes to the options.

(e) Lien position of the loan.

(f) Terms and the number of months or years for amortization purposes.

(g) Prepayment penalty terms and conditions.

(h) Any other term or condition that may be specific to a certain loan product.

(20) Must I provide the written disclosures required under RCW 19.146.030 if all I do is obtain a credit report on a consumer who

has identified a specific property for a purchase and sales agreement or contract, or a refinance loan? Yes. At that point, you have collected enough information on behalf of the consumer for you to anticipate a credit decision under RESPA's Regulation X, 24 (~~C.F.R.~~) CFR Sections 3500 et seq. and you must provide the consumer with all required disclosures. See the definition of "application" in these rules.

(21) If a loan application is canceled within three days of application must I provide the disclosures required under RCW 19.146.030? If you have not used any borrower trust funds and those funds have been returned to the borrower in conformance with these rules, the disclosures pursuant to RCW 19.146.030 are not required.

(22) Is a mortgage broker that table funds a loan exempt from disclosures? No. A mortgage broker must provide all disclosures required by the act, and disclose all fees as required by Regulation X, regardless of the funding mechanism used in the transaction.

(23) What must I disclose to a potential borrower when I advertise my business or services to them using information about their current loan? You must disclose the source from which you obtained the information about the borrower's current loan when the information was not obtained by soliciting, making a residential loan, or assisting that potential borrower in obtaining or applying to obtain a residential mortgage loan. If the information was provided by a company that searched public records and provided you the information, the "source" is the company that provided the records, not "public records."

(24) What must I provide to the borrower if I am unable to complete a loan for them and they have paid for services from third-party providers? If you are unable to complete a loan for the borrower for any reason, and if the borrower has paid you for third-party provider services, and the borrower makes a written request to you, you must provide the borrower with copies of the product from any third-party provider, including, but not limited to, an appraisal, title report, or credit report. You must provide the copies within five business days of the borrower's request.

The borrower may also request that you provide the originals of the documents to another mortgage broker or lender of the borrower's choice. By furnishing the originals to another mortgage broker or lender, you are conveying the right to use the documents to the other broker or lender. You must, upon request by the other broker or lender, provide written evidence of the conveyance. You must provide the originals to the mortgage broker or lender within five business days of the borrower's request.

WAC 208-660-440 Advertising. (1) **Am I responsible for ensuring that my advertising material is accurate, reliable, and in compliance with the act?** Yes. Each mortgage broker is responsible for ensuring the accuracy and reliability of the advertising material.

(2) **A licensee is prohibited from advertising with envelopes or stationery that contain an official-looking emblem designed to resemble a government mailing or that suggest an affiliation that does not exist. What are some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws?** Some examples include, but are not limited to:

(a) An official-looking emblem such as an eagle, the Statue of Liberty, or a crest or seal that resembles one used by any state or federal government agency.

(b) Envelopes designed to resemble official government mailings, such as IRS or U.S. Treasury envelopes, or other government mailers.

(c) Warnings or notices citing government codes or form numbers not required by the U.S. Postmaster to be shown on the mailing.

(d) The use of the term "official business," or similar language implying official or government business, without also including the name of the sender.

(e) Any suggestion or representation that the solicitor is affiliated with any agency, bank, or other entity that it does not actually represent.

(3) **Is it a violation to advertise that third-party services are "free" when the licensee has paid for the services?** Yes. Advertising using the term "free," or any other similar term or phrase that implies there is no cost to the applicant is deceptive because you can recover the cost of the purportedly "free" item through the negotiation process. This is a violation of RCW 19.146.0201 (2), (7), and (11). See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations* (16 CFR §251.1(g) (2003)) available at <http://www.ftc.gov/bcp/guides/free.htm>.

(4) **When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR?** The required disclosures in your advertisements must be reasonably understandable. Consumers must be able to read or hear, and understand the information. Many factors, including the size, duration, and location of the required disclosures, and the background or other information in the advertisement, can affect whether the information is clear and conspicuous. The disclosure of the APR must be as prominent or more prominent than any other rates disclosed in the advertisement, regardless of the

form of the advertisement.

~~((+4+))~~ (5) **The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised?** Whenever a specific interest rate is advertised, the mortgage broker must retain a copy of the lender's "rate sheet," or other supporting rate information, and the APR calculation for the advertised interest rate.

~~((+5+))~~ (6) **Must I quote the annual percentage rate when discussing rates with a borrower?** Yes. You must quote the annual percentage rate and other terms of the loan if you give an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 ~~((C.F.R.))~~ CFR, part 226.26 provides guidance for using the annual percentage rate in oral disclosures.

~~((+6+))~~ (7) **May a mortgage broker or loan originator advertise rates or fees as the "lowest" or "best"?** No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW 19.146.0201(7).

~~((+7+))~~ (8) **When I advertise, or present a business card to a potential borrower, must I make the disclosures required under the act and these rules?** No. You are not required to make disclosures until you accept a residential mortgage loan application, or until you assist a borrower in preparing an application.

~~((+8+))~~ (9) **May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am?** No. It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

~~((+9+))~~ (10) **If I advertise using a borrower's current loan information, what must I disclose about that information?** When an advertisement includes information about a borrower's current loan that you did not obtain from a solicitation, application, or loan, you must provide the borrower with:

- (a) The name of the source of the information;
- (b) A statement that you are not affiliated with the borrower's lender; and
- (c) The information disclosed in (a) and (b) of this subsection must be in the same size type font as the rest of the information in the advertisement.

WAC 208-660-500 Prohibited practices. (1) What may I request of an appraiser? You may request an area or market survey. While there are no strict definitions of these terms, generally they refer to general information regarding a region, area, or plat. The information usually includes the high, low and average sales price, numbers of properties available for sale or that have been sold within a set period, marketing times, days on market, absorption rate or the mixture of different property types in the specified area, among other possible components. An area survey does not contain sufficient information or is not so defining as to allow an appraiser or reader to determine the value of a specified property or property type.

(2) How may I discuss property values with an appraiser, prior to the appraisal, without the discussion constituting improperly influencing the appraiser? You may inform the appraiser of your opinion of value, the borrower's opinion of value, or the list or sales price of the property. You are prohibited from telling the appraiser the value you need or that is required for your loan to be successful.

(3) What business practices are prohibited? The following business practices are prohibited:

(a) Directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(b) Engaging in any unfair or deceptive practice toward any person.

(c) Obtaining property by fraud or misrepresentation.

(d) Soliciting or entering into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.

(e) Charging discount points on a loan which does not result in a reduction of the interest rate. Some examples of discount point misrepresentations are:

(i) A mortgage broker or lender charging discount points on the good faith estimate or settlement statement payable to the mortgage broker or any party that is not the actual lender on the resident mortgage loan.

(ii) Charging loan fees or mortgage broker fees that are represented to the borrower as discount points when such fees do not actually reduce the rate on the loan, or reflecting loan origination fees or mortgage broker fees as discount points.

(iii) Charging discount points that are not mathematically determinable as the same direct reduction of the rate available to any two borrowers with the same program and underwriting characteristics on the same date of disclosure.

(f) Failing to clearly and conspicuously disclose whether a payment advertised or offered for a residential mortgage loan

includes amounts for taxes, insurance, or other products sold to the borrower. This prohibition includes the practice of misrepresenting, either orally, in writing, or in any advertising materials, a loan payment that includes only principal and interest as a loan payment that includes principal, interest, tax, and insurance.

(g) Failing to provide the exact pay-off amount of a loan you own or service as of a certain date five or fewer business days after being requested in writing to do so by a borrower of record or their authorized representative.

(h) Failing to record a borrower's payment, on a loan you own or service, as received on the day it is delivered to any of the licensee's locations during its regular working hours.

(i) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department.

(j) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower in order to verify that the asset is not otherwise insured.

(k) Willfully filing a lien on property without a legal basis to do so.

(l) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction.

(m) Failing to reconvey title to collateral, if any, within thirty days when the loan is paid in full unless conditions exist that make compliance unreasonable.

(n) Failing to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law.

(o) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan. An example is advertising a discounted rate without clearly and conspicuously disclosing in the advertisement the cost of the discount to the borrower and that the rate is discounted.

(p) Engage in bait and switch advertising.

Bait and switch means a deceptive practice of soliciting or promising a loan at favorable terms, but later "switching" or providing a loan at less favorable terms. While bait and switch will be determined by the facts of a case, the following examples, alone or in combination, may exhibit a bait and switch practice:

(i) A deceptive change of loan program from fixed to variable rate.

(ii) A deceptive increase in interest rate.

(iii) The misrepresentation of discount points. This may include discount points that have a different rate buydown effect than promised, or origination fees that a borrower has been led to believe are discount points affecting the rate.

(iv) A deceptive increase in fees or other costs.

(v) A deceptive disclosure of monthly payment amount. This practice may involve soliciting a loan with payments that do not include monthly amounts for taxes and insurance or other reserved items, while leading the borrower to believe that such amounts are included.

(vi) Additional undisclosed terms such as prepayment penalties or balloon payments, or deceiving borrowers about the effect of disclosed terms.

(vii) Additional layers of financing not previously disclosed that serve to increase the overall cost to the borrower. This practice may involve the surprise combination of first and second mortgages to achieve the originally promised loan amount.

(viii) Leading borrowers to believe that subsequent events will be possible or practical when in fact it is known that the events will not be possible or practical.

(ix) Advertising or offering rates, programs, or terms that are not actually available at the time. See WAC 208-660-440(4).

(q) Engage in unfair or deceptive advertising practices. Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace.

(r) Negligently making any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department.

(s) Making any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

(t) Advertising a rate of interest without clearly and conspicuously disclosing the annual percentage rate implied by the rate of interest.

(u) Failing to comply with the federal statutes and regulations in RCW 19.146.0201(11).

(v) Failing to pay third-party providers within the applicable timelines.

(w) Collecting or charging, or attempting to collect or charge, or use or propose any agreement purporting to collect or charge any fees prohibited by the act.

(x) Acting as a loan originator and real estate broker or salesperson, or acting as a loan originator in a manner that violates RCW 19.146.0201(14).

(y) Failing to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

(4) **What federal guidance has the director adopted for use by the department in determining if a violation under subsection (3)(b) of this section has occurred?** The director has adopted the following documents:

(a) The Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators "Guidance on Nontraditional Mortgage Product Risks" (released November 14, 2006); and

(b) The Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators, and National Association of Consumer Credit Administrators "Statement on Subprime Mortgage Lending," effective July 10, 2007 (published in the Federal Register at Vol. 72, No. 131).

(5) **What must I do to comply with the federal guidelines on nontraditional mortgage loan product risks and statement on subprime lending?** You must adopt written policies and procedures implementing the federal guidelines that are applicable to your mortgage broker business. The policies and procedures must be maintained as a part of your books and records and must be made available to the department upon request.

(6) **When I develop policies and procedures to implement the federal guidelines, what topics must be included?** The policies and procedures must include, at a minimum, the following:

(a) Consumer protection.

Communication with borrowers. Providers must focus on information important to consumer decision making; highlight key information so that it will be noticed; employ a user-friendly and readily navigable format for presenting the information; and use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers. Promotional materials and other product descriptions must provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions. Specifically:

- Borrowers must be advised of potential increases in payment obligations. The information should describe when structural payment changes will occur and what the new payment would be or how it was calculated. For example, loan products with low initial payments based on a fixed introductory rate that expires after a short time and then adjusts to a variable index rate plus a margin must be adequately described to the borrower. Because initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier than scheduled recasting of monthly payments.

- Borrowers must be advised as to the maximum amount their monthly payment may be if the interest rate increases to its maximum rate under the terms of the loan.

- Borrowers must be advised as to the maximum interest rate that can occur under the terms of the loan.

- Borrowers must be alerted to the fact that the loan has a prepayment penalty and the amount of the penalty.

- Borrowers must be made aware of any pricing premium based on reduced documentation.

(b) Control standards.

(i) Actual practices must be consistent with the written policies and procedures. Employees must be trained in the policies and procedures and performance monitored for compliance. Incentive programs should not produce high concentrations of nontraditional

products. Performance measures and reporting systems should be designed to provide early warning of increased risk.

(ii) Reporting to DFI. In a separate written document, as prescribed by the director and submitted with the mortgage broker annual report, every licensee must submit information regarding the offering of nontraditional mortgage loan products.

(7) May I charge a loan origination fee or discount points when I originate but do not make a loan? No. You may not charge a loan origination fee or discount points as described in Regulation X, Part 3500, Appendix A.

((+6)) (8) What mortgage broker fees may I charge? You may charge a mortgage broker fee that was agreed upon between you and the borrower as stated on a good faith estimate disclosure form or similar document provided that such fee is disclosed in compliance with the act and these rules.

((+7)) (9) How do I disclose my mortgage broker fees on the good faith estimate and settlement statement? You must disclose or direct the disclosure of your fees on lines 808 through 811 of the good faith estimate and HUD-1/1A Settlement Statement or similar document.

((+8)) (10) May I charge the borrower a fee that exceeds the fee I initially disclosed to the borrower? Pursuant to RCW 19.146.030(4), you may not charge any fee that benefits you if it exceeds the fee you initially disclosed unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the initial disclosure was provided; and

(b) You have provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed. See WAC 208-660-430 for specific details, disclosures, and exceptions implementing RCW 19.146.030(4).

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-600 Administration and facilitation of continuing education. (1) Who may offer continuing education courses to principals, designated mortgage brokers, and loan originators? Continuing education may be offered by:

(a) Course providers with courses of education approved by the director; or

(b) Course providers with courses of education approved by professional organizations approved by the director.

(2) What does it mean to offer and administer a course of education? Offering and administering a course of education is the creation of a curriculum and the administrative processes to operate and maintain the curriculum. See the department's approval

standards in subsections (7) and (14) of this section.

(3) **What is a "course of education" under the act?** A course of education is formal training that satisfies all or part of the continuing education requirements of the act and these rules.

(4) **What is a "course provider" under the act?** A course provider is a person or organization that provides continuing education. Course providers may provide education that meets the requirements of the act and these rules by applying for and receiving approval from the department for a specific course of education.

(5) **What is a "professional organization" under the act?** A professional organization is an organization with at least ten members created for the primary purpose of furthering the professional interests of its members, protecting the public interest, or both. Education must be an essential element of the professional organization's purpose. A professional organization must have the director's approval to offer and administer courses of education.

(6) **If I am a course provider not affiliated with a professional organization, how do I obtain approval for my courses of education?** You must apply to the department for course approval. If the department approves the course, you will be issued a certificate of approval that will be effective for two years from the date of issuance.

(7) **What standard is required and what will the department review when considering approval of continuing education provided by course providers not affiliated with professional organizations?** Continuing education courses must provide the course taker with a working knowledge of, and competency in, the subject matter. To ensure this standard, the department will review the following when considering approval of education courses:

- (a) The instructor's experience and qualifications;
- (b) Whether the instructor or proposed course of education has been approved, denied, or rescinded by the department in the past; and
- (c) The course materials and lesson plans for the proposed courses. Each course must run a minimum of three hours; the materials and lesson plans must have the content to support a presentation of this length.

(8) **If I am a course provider with courses of education approved by a professional organization, may I also offer courses of education unaffiliated with the professional organization?** Yes. However, your courses of education unaffiliated with the professional organization must be approved by the department.

(9) **May the department rescind approval of a course provider's course of education?** Yes. The department may rescind approval of a course of education:

- (a) Upon a determination that the course of education does not meet the standards in subsection (7) of this section; or
- (b) If the course provider does not provide the required quarterly reports described in subsection (13) of this section.

(10) **What action must a course provider take if notified by**

the department that its course of education has been rescinded?
The course provider must immediately:

(a) Cease advertising or soliciting for the course of education;

(b) Inform registered course takers of the department's rescission of course approval, and cancel the course of education; and

(c) Refund any fees paid by course takers for the course.

(11) May a course provider appeal the department's decision to deny or rescind course approval? Yes. A course provider may appeal the department's decision to deny or rescind a course. The course provider must appeal the decision to the department within twenty days of being notified by the department of the decision.

(12) If a course provider has appealed the department's denial or rescission of a course of education, must it still take the immediate action in subsection (10) of this section? Yes. A course provider appealing a department decision about a course of education must comply with subsection (10) of this section.

(13) I am a course provider who provides approved continuing education courses directly to licensees, or I provide courses with the approval of a professional organization. What reports must I provide to the department? You must provide quarterly reports to the department, in a form prescribed by the director. The reports must be received by the department no later than April 10, July 10, October 10, and January 10 of each year. The reports must contain the following information:

(a) The course taker's name;

(b) The course taker's license number, or Social Security number;

(c) The name of the course;

(d) The date the course was taken; and

(e) Whether the course taker received a certificate of satisfactory completion.

If you provide the reports electronically, the data must be encrypted as prescribed by the director.

(14) What standards will the department review when considering approving professional organizations to offer and administer courses of education under the act and rules? The department will review the following:

(a) A description of the course of education curriculum that satisfies the content of continuing education under subsection (22) of this section;

(b) Whether the professional organization has sufficient procedures and guidelines to:

(i) Establish a course(s) of education and approve a course provider(s);

(ii) Audit and evaluate an approved course(s) of education and course provider(s);

(iii) Remove courses and providers from the professional organization's curriculum;

(iv) Provide board reconsideration of denial or removal of a course of education or a course provider;

(v) Ascertain the identity of course of education takers;
(vi) Issue certificates of satisfactory completion, that include, at a minimum, the course taker's name, the course provider's name, the course title, and the date of course completion;

(vii) Collect, hold, disburse and refund course of education fees;

(c) Whether the professional organization requires members to adhere to an established code of conduct or ethics.

(15) Is the department liable for a professional organization's decision to approve, deny, or revoke authorization for a course provider to offer courses of education? No. The department is not liable for a professional organization's decision to approve, deny, or revoke a course provider's authorization to provide courses of education for the professional organization.

(16) Is the department liable for a course provider's contractual relationship with a professional organization? No. Course providers independently contract with professional organizations and the department is not liable for the consequences of that relationship.

(17) May the department remove a professional organization's authorization to offer and administer courses of education? Yes. The department may rescind a professional organization's authorization to offer and administer courses of education:

(a) Upon a determination that the professional organization fails to meet subsection (14) of this section; or

(b) If the professional organization fails to provide the required quarterly reports described in subsection (21) of this section.

(18) What action must a professional organization take if notified by the department that its authorization has been rescinded? The professional organization must immediately:

(a) Cease advertising or soliciting for all courses of education;

(b) Inform registered course takers of the department's rescission of approval, and cancel the courses of education; and

(c) Refund any fees paid by course takers for the courses.

(19) May a professional organization appeal the department's decision to deny or rescind authorization? Yes. A professional organization may appeal the department's decision to deny or rescind the professional organization's authorization to approve course providers. The professional organization must appeal the decision to the department within twenty days of being notified by the department of the decision.

(20) If a professional organization has appealed the department's denial or rescission of authorization, must it still take the immediate action in subsection (18) of this section? Yes. A professional organization appealing a department decision about a course provider or course of education must comply with subsection (18) of this section.

(21) When a professional organization is approved by the

department to offer continuing education courses to licensees, and does so, what reports must the professional organization provide to the department? The professional organization must provide quarterly reports to the department, in a form prescribed by the director. The reports must be received by the department no later than April 10, July 10, October 10, and January 10 of each year. The reports must contain the following information:

- (a) The course taker's name;
- (b) The course taker's license number, or Social Security number if not currently licensed;
- (c) The name of the course;
- (d) The date the course was taken; and
- (e) Whether the course taker received a certificate of satisfactory completion.

If you provide the reports electronically, the data must be encrypted as prescribed by the director.

(22) How long does department approval for a professional organization to offer continuing education courses last, and may the approval be renewed? Approval of a continuing education course is valid for two years. Approval may be renewed by applying to the director forty-five days prior to expiration of a current approval and providing detailed information about the course(s) and instructor(s) if they are to be changed.

(23) What topics must be included as continuing education courses? Continuing education courses must include some or all of the topics listed below. Courses may be designed to cover a range of topics or they may focus in detail on a single topic.

(a) General.

(i) Ethics in the mortgage industry.

The responsibilities and liabilities of the profession including instruction on fraud, consumer protection, and fair lending issues.

(ii) Lending standards for nontraditional mortgage products.

(iii) Arithmetical computations common to mortgage lending including without limitation, the computation of annual percentage rate, finance charge, amount financed, payment and amortization.

(b) Compliance and internal audit standards.

Proper use and application of the department's published standards and guidelines for examinations.

Internal audit and compliance practices, standards, methods and procedures.

Developing policies and procedures for regulatory compliance.

Responding to regulatory inquiries, directives, subpoenas and enforcement orders.

Training and supervision of mortgage professionals.

Establishing, managing, reconciling and reviewing a trust account (trust account compliance under the act and these rules).

(c) Washington law and associated regulations.

The Mortgage Broker Practices Act.

The Consumer Protection Act.

The Escrow Agent Registration Act.

The Usury Act.

Unfair practices with respect to real estate transactions (RCW 49.60.222).

Mortgage, deed of trust, and real estate contract statutes set forth in Title 61 RCW.

Real estate and appraisal law, including without limitation, the provisions of chapters 18.85 and 18.140 RCW.

Washington principal and agent law.

Any subsequent act or regulation applying to mortgage brokers.

(d) **Federal law and associated regulations.**

The Real Estate Settlement Procedures Act.

Truth in Lending Act.

Equal Credit Opportunity Act.

Fair Credit Reporting Act.

Fair Housing Act.

Home Mortgage Disclosure Act.

Community Reinvestment Act.

Gramm-Leach Bliley Act.

Home Ownership Protection Act.

Bank Secrecy Act.

Appraisal regulations.

Underwriting.

The SAFE Act (Title V of the Housing and Economic Reform Act of 2008 ("HERA")) Public Law No. 110-289.

Any subsequent act or regulation applying to mortgage brokers.

(e) **Mortgage services and products.**

Conventional.

Reverse mortgages.

FHA mortgages.

VA mortgages.

Nonprime mortgages.

Other products or services deemed relevant to continuing education by the department.

(24) **May the department audit or review a course of education?**

Yes. The department may audit or review any continuing education course by registering for the course or attending the course of education unannounced by presenting the course provider with official identification prior to the start of the course. The department will not be charged any fee for official audit or review of the course of education.